

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 625

Introduced by Senator Hernandez

February 18, 2011

An act to ~~repeal and add Chapter 27 (commencing with Section 79401) of Part 2 of Division 22~~ amend Sections 6701, 6722, 6727, 6728, 6761, 6901, 6902, 6903, 6904, 6921, 6922, 6923, 6925, 6961, and 6968 of the Food and Agricultural Code, relating to agriculture, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 625, as amended, Hernandez. ~~California Nursery Producers Commission. Nursery stock.~~

Existing law specifies the duties of the Secretary of Food and Agriculture and county agricultural commissioners with respect to the sale and control of nursery stock, as defined. Existing law requires a person to hold a valid license in order to sell nursery stock and makes a violation of these provisions a crime. Under existing law, the secretary is prohibited from refunding more than $\frac{1}{2}$ of the minimum license fee to any person who applies for a license to sell nursery stock and who later decides not to do so.

This bill would prohibit the secretary from returning more than 25% of the minimum license fee.

Existing law requires the secretary, by regulation, to provide for periodic inspections of nurseries and authorizes the secretary to prescribe standards of cleanliness for nursery stock. Existing law sets forth suggestions for the standards of cleanliness.

This bill would make specified standards of cleanliness, including, but not limited to, being free of pests and isolation of infested or infected plants, mandatory.

Under existing law, it is unlawful to move nursery stock without a valid nursery certificate unless the person has forwarded to the county agricultural commissioner, at or prior to the time of shipment, a manifest stating prescribed information. Under existing law, it is also unlawful to ship, or cause to be shipped, nursery stock from one county to another without a nursery stock certificate or shipping permit. Existing law authorizes the county agricultural commissioner to revoke or suspend the right to use a nursery stock certificate or shipping permit if the person fails to comply with the statutory provisions applicable to nursery stock.

This bill would require the person to forward the manifest to the county agricultural commissioner prior to shipment. The bill would require the county agricultural commissioner to revoke or suspend the right to use a nursery stock certificate if the person fails to comply with the statutory provisions applicable to nursery stock. The bill would also make technical, nonsubstantive changes to the nursery stock provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) Existing law establishes in state government the California Nursery Producers Commission with a prescribed membership, and specifies the powers, duties, and responsibilities of the commission. The commission is authorized, subject to the approval of eligible producers, by referendum, to carry out programs of outreach, education, promotion, marketing, and research relating to nursery products, to levy an annual assessment, not to exceed a specified amount, on producers of nursery products, and to authorize the expenditure of those funds for purposes of implementing and administering the bill's provisions, thereby making an appropriation.~~

~~This bill would repeal these provisions and reestablish the California Nursery Producers Commission with the same membership, powers, duties and responsibilities. The bill would not, except as necessary to~~

conduct an election, become operative until eligible producers, by referendum, vote in favor of these provisions, as prescribed.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

The bill would make legislative findings to that effect.

(3) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6701 of the Food and Agricultural Code
2 is amended to read:

3 6701. The ~~director~~ secretary may publish in pamphlet form,
4 as often as he or she deems necessary, a list of all persons that are
5 licensed pursuant to this chapter. The pamphlet may also contain
6 such additional information as the ~~director~~ secretary deems
7 advisable concerning the enforcement of laws and regulations
8 which pertain to nursery stock.

9 SEC. 2. Section 6722 of the Food and Agricultural Code is
10 amended to read:

11 6722. Except as provided in Section 6761, the ~~director~~
12 secretary, upon receipt of the total license fee which is established
13 pursuant to Section 6723, shall issue a license to sell nursery stock
14 for the appropriate period as established pursuant to Section 6724
15 to any person that sells or seeks to sell plants, as defined in Section
16 5007, for planting, propagation, or ornamentation. Plants for
17 ornamentation shall include cut flowers and cut greens. The
18 applicant shall further satisfy the ~~director~~ secretary of his or her
19 character and good faith in seeking to carry on the business of
20 selling nursery stock.

21 SEC. 3. Section 6727 of the Food and Agricultural Code is
22 amended to read:

6727. No restoration fee is required of ~~any~~ a person whose application for renewal of a license is accompanied by his or her signed statement that ~~has not sold any prior to the date of his application and payment of the minimum license fee~~ he the licensee did not sell nursery stock during any part of the license period for which he applies for renewal of the license during the time the license was lapsed and for which the licensee is applying for renewal. The ~~director~~ secretary also may accept, at his or her discretion, the licensee's affidavit that the minimum license fee was not paid within the time limits specified in Section 6724 for reasons beyond the licensee's control.

SEC. 4. Section 6728 of the Food and Agricultural Code is amended to read:

6728. The ~~director~~ secretary shall not refund more than ~~one-half~~ 25 percent of the minimum license fee to any person who applies for a license to sell nursery stock and who later decides not to engage in the sale of nursery stock. No portion of the minimum license fee shall be refunded to any person who is denied a license pursuant to Section 6761.

SEC. 5. Section 6761 of the Food and Agricultural Code is amended to read:

6761. The ~~director~~ secretary, after investigation and hearing, may refuse to issue or renew a license, or may suspend or revoke a license, if he or she determines that the licensee or the applicant has done any of the following:

(a) ~~Has willfully~~ Willfully refused to comply with the laws and regulations relative to nursery stock; or to any pest which might be carried by nursery stock.

(b) ~~Was intentionally guilty of~~ Intentionally committed fraud or deception in the procurement of the license.

(c) ~~Has been~~ Been found guilty of fraud or misrepresentation in the handling or sale of nursery stock.

(d) ~~Has failed~~ Failed to maintain nursery stock produced or sold by him or her in accordance with the standards of cleanliness which that are prescribed by the ~~director~~ secretary.

(e) ~~Has failed~~ Failed to comply with any lawful order ~~which~~ that is issued by the ~~director~~ secretary or commissioner.

SEC. 6. Section 6901 of the Food and Agricultural Code is amended to read:

1 6901. The ~~director~~ *secretary* by regulation shall provide for
2 periodic inspections of nurseries and may prescribe standards of
3 cleanliness for nursery stock ~~which~~ *that* is produced or sold within
4 the state.

5 *SEC. 7. Section 6902 of the Food and Agricultural Code is*
6 *amended to read:*

7 6902. The standards of cleanliness ~~may~~ *shall do, but not be*
8 *limited to, the following:*

9 (a) Provide that all nursery stock shall be kept free from pests
10 of limited distribution or pests ~~which~~ *that* are not known to be
11 established in this state and commercially clean in respect to
12 established pests of general distribution.

13 (b) Prescribe methods of treatment of various types of nursery
14 stock for control of pests.

15 (c) Require isolation of infested or infected nursery stock
16 pending treatment or other disposal.

17 (d) Make ~~such~~ other provisions as are reasonably necessary to
18 ~~insure~~ *ensure* the relative freedom from pests of all nursery stock
19 ~~which~~ *that* is produced or sold within the state.

20 *SEC. 8. Section 6903 of the Food and Agricultural Code is*
21 *amended to read:*

22 6903. The commissioner shall inspect all nurseries within his
23 *or her* jurisdiction when and as required by the regulations of the
24 ~~director~~ *secretary*.

25 *SEC. 9. Section 6904 of the Food and Agricultural Code is*
26 *amended to read:*

27 6904. The commissioner shall issue ~~such~~ orders as may
28 reasonably be necessary to ~~insure~~ *ensure* compliance with the
29 standards of cleanliness.

30 Any interested person, upon request, is entitled to a hearing
31 before the ~~director~~ *secretary* to review any order ~~which~~ *is* issued
32 by a commissioner pursuant to this section.

33 *SEC. 10. Section 6921 of the Food and Agricultural Code is*
34 *amended to read:*

35 6921. It is unlawful for any person to ship, or cause to be
36 shipped, any nursery stock from one county or locality of the state
37 to another county or locality within the state unless he *or she* has
38 marked upon ~~such~~ *the* nursery stock, in a conspicuous manner and
39 place, both of the following:

1 (a) The name and address of the shipper, owner, or person that
2 is forwarding the nursery stock.

3 (b) The name of the person, or his *or her* agent, to whom the
4 nursery stock is forwarded.

5 *SEC. 11. Section 6922 of the Food and Agricultural Code is*
6 *amended to read:*

7 6922. Except as otherwise provided in Sections 6502, 6504,
8 6505, 6506, and 6924, it is unlawful for~~any~~ a person to sell,
9 deliver, or transport~~any~~ nursery stock from one county to another
10 county within the state unless he *or she* has affixed to~~such~~ the
11 nursery stock in a conspicuous place one of the following, which
12 is issued by the commissioner of the county of origin:

13 (a) A shipping permit that warns that inspection at destination
14 is required.

15 (b) A valid nursery stock certificate.

16 *SEC. 12. Section 6923 of the Food and Agricultural Code is*
17 *amended to read:*

18 6923. Except as otherwise provided in Section 6502 or~~Section~~
19 6506, it is unlawful for~~any~~ a person to sell, deliver, or transport
20 from one locality to another locality within the same county~~any~~
21 nursery stock~~which~~ that the commissioner considers and
22 designates to be liable to be infested with any pest, unless he *or*
23 *she* has affixed to~~such~~ the nursery stock in a conspicuous place
24 one of the following:

25 (a) A shipping permit that warns that inspection at destination
26 is required.

27 (b) A valid nursery stock certificate issued by the commissioner
28 of the county, which gives notice that inspection at destination is
29 not required.

30 *SEC. 13. Section 6925 of the Food and Agricultural Code is*
31 *amended to read:*

32 6925. It is unlawful for~~any~~ a person to move~~any~~ nursery
33 stock from one locality to another locality within the same county
34 under conditions provided in Section 6926, or from one county to
35 another county within the state, except nursery stock~~which~~ that
36 is accompanied by a valid nursery stock certificate, unless~~such~~
37 the person forwards, ~~at or~~ prior to the time of shipment, to the
38 commissioner who has jurisdiction at the destination, a manifest
39 ~~which states~~ stating all of the following:

40 (a) Name and address of the shipper.

(b) Name and address of the person to whom the shipment is being forwarded.

(c) Name and quantity of each kind of plant ~~which is~~ contained in the shipment.

(d) Name of the locality where each kind of nursery stock was grown.

(e) Name of the carrier by which the shipment is being transported, whether by freight, express, mail, truck, boat, airplane, or otherwise.

The requirement for a manifest does not apply to ~~any~~ the shipment of seeds.

SEC. 14. Section 6961 of the Food and Agricultural Code is amended to read:

6961. The ~~director~~ *secretary* may issue regulations ~~which that~~ will govern the issuance and form of nursery stock certificates and shipping permits and their use on shipments of nursery stock, to ~~insure~~ *ensure* the relative freedom from pests of all nursery stock ~~which that~~ is produced or sold within the state, and which will evidence compliance with the following:

(a) The inspections and standards of cleanliness in Article 1 (commencing with Section 6901).

(b) The nursery stock grades and standards in Chapter 5 (commencing with Section 53301) *of Division 18*.

(c) Any other law, or lawful order ~~which that~~ is issued by the ~~director~~ *secretary* or the commissioner, relating to the production or sale of nursery stock within the state, or any shipment thereof except where a specific certificate or permit is required by ~~any a~~ quarantine regulation ~~which that~~ is issued pursuant to ~~Sections~~ *Section 5301, 5302, or 5322*.

SEC. 15. Section 6968 of the Food and Agricultural Code is amended to read:

6968. The commissioner ~~may~~ *shall* revoke or suspend the right to use ~~any a~~ nursery stock certificate or shipping permit ~~which that~~ is issued to ~~any a~~ person that fails to comply with the provisions of this chapter, Chapter 5 (commencing with Section 53301) *of Division 18*, or any regulation issued pursuant thereto.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6
7
8 **All matter omitted in this version of the bill**
9 **appears in the bill as introduced in the**
10 **Senate, February 18, 2011. (JR11)**
11